



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner) #74
Janesville, WI 53546

DECISION

MRA-53/58046

PRELIMINARY RECITALS

Pursuant to a petition filed May 10, 2003, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Rock County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on May 29, 2003, at Janesville, Wisconsin. At the request of petitioner's representative, the record was held open until June 12, 2003 for the submission of documentation that her "basic and necessary expenses" were above \$2,020 per month. The petitioner's representative did not submit any documentation by the deadline or thereafter.

The issue for determination is whether the petitioner has met his burden of proof to establish that his community spouse's income allocation should be increased.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Representative:

(petitioner's spouse)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Sherry Quirk, ES Supervisor, ESS
Rock County Dept Of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53547-1649

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Rock County who has been a resident of the Nursing Home since about April 18, 2003. He has received Institutional MA as of May 1, 2003. His wife resides in a home in the community.
2. Petitioner's monthly income consists of \$817 in monthly Social Security retirement payments and a monthly pension of \$318.94 for a total monthly income of \$1,135.94. See Exhibit 1. His wife has monthly gross earned income of \$1,600.00 as an assembler for SSI Technologies. See Exhibit 1.
3. During May, 2003, petitioner requested an increase in the income allocation to his wife as the community spouse. The county agency sent a May 8, 2003 Notice of Decision to the petitioner which determined the allocation to his community spouse to be \$2,020. This notice indicated how those determinations had been calculated.
4. During the May 29, 2003 hearing, the county agency stipulated that petitioner's community spouse should receive a spousal income allocation of \$420 ($\$2,020 - \$1,600 = \420). See Exhibit 1.
5. Petitioner filed this appeal on May 10, 2003 seeking an increase in his wife's income allocation.
6. During the May 29, 2003, petitioner's representative failed to establish that petitioner's wife has basic and necessary monthly expenses totaling above \$2,020.
7. While the record was held open, petitioner's representative failed to submit any documentation to the Division of Hearings and Appeals to establish that petitioner's spouse has basic and necessary monthly expenses totaling above \$2,020.

DISCUSSION

The federal Medicare Catastrophic Coverage Act of 1988 included extensive changes in State Medicaid eligibility determinations as they relate to spousal impoverishment where one spouse is a resident in a nursing home. The purpose of the new act was to protect a "community" spouse's assets and resources and designate how a spousal share would be computed. The Act also established a new minimum needs allowance for the community spouse at a specified percentage of the federal poverty line. Sec. 49.455, Wis. Stats., is the Wisconsin codification of 42 U.S.C. s.13964-5 (MCCA). Among other thing, the "spousal impoverishment" provisions at sec. 49.455 direct the Department to establish an income allowance for the community spouse of an institutionalized person. Consequently the Wisconsin Legislature enacted sec. 49.455, Wis. Stats. in order to bring the Wisconsin Medicaid program into conformity with federal law. Section 49.455 specifically states that the department is to use the criteria of that statutory section in determining the eligibility for medical assistance under §49.46 or 49.47, Wis. Stats. and the required contribution toward the care of an institutionalized spouse.

"Community spouse" refers to the person who is married to an institutionalized individual. See sec. 49.455(1), Wis. Stats. As a general rule, no income of a spouse is considered to be available for use by the other spouse during any month in which that other spouse is an institutionalized spouse. See sec. 49.455(3), Wis. Stats. However, after an institutionalized person is found eligible for medical assistance (MA), he or she may allocate income to the community spouse.

If the community spouse's monthly income is below a certain amount, the institutionalized spouse may allocate some of his or her income to bring the community spouse's income up to that amount. That amount is the lesser of \$2,266.50 or \$2,020.00 plus an excess shelter allowance. In this case, sec. 49.455(4)(c), Wis. Stats., the Medical Assistance Handbook, Appendix 23.6.0. (3-1-03 edition), and sec. 49.455(4)(b), Wis. Stats., allow an increase in the monthly community spouse allotment by order of a fair hearing

administrative law judge (ALJ) or a court. See also MA Handbook, Appendix 23.6.0. In its May 8, 2003 Notice of Decision, the county agency determined petitioner's community spouse's income allocation to be \$2,020.00.

In order to increase the allotment, the ALJ must find exceptional circumstances resulting in financial duress. See sec. 49.455(8)(c), Stats. The hearing officer does not have unfettered discretion in creating an exception to the maximum allocation ceiling, however. The relevant statutory provision states that the test for exception is as follows:

(c) If either spouse establishes at a fair hearing that, **due to exceptional circumstances resulting in financial duress**, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse monthly income allowance under sub. (4)(b).

(emphasis added)

Sec. 49.455(8)(c), Wis. Stats. Thus a hearing officer may augment the maximum allocation ceiling only by amounts needed to alleviate financial duress, to allow the community spouse to meet necessary and basic maintenance needs. During the hearing or while the record was held open, the petitioner's wife was unable to establish any exceptional circumstances resulting in financial duress, which justified an increase in her minimum monthly maintenance allowance.

It is important to emphasize that even if income allocation is possible, not all expenses qualify. In order for a Hearing Officer to use expenses, they must meet "**necessary and basic maintenance needs**" MA Handbook, Appendix 23.6.0. "Income Allocation". This corresponds to the statutory language that the new income amount is in lieu of the "minimum monthly maintenance needs". Sec. 49.455(8)(c), Stats., (emphasis added.) Because the community spouse is essentially asking state taxpayers to give the nursing home or group home resident more welfare in the form of MA, I do not think that every expense is automatically appropriate for inclusion, even if it is not frivolous.

During the May 29, 2003 hearing, petitioner's wife was unable to provide any list or documentation of her monthly expenses. This administrative law judge (ALJ) provided a very detailed explanation as to the documentation that she needs to submit to establish her monthly basic and necessary expenses, and why she needed an increase in her current \$2,020 community spouse income allocation. At the request of (petitioner's spouse), the record was held open for two weeks for her to submit a list and documentation of her basic and necessary monthly expenses. (petitioner's spouse) failed to submit any documentation to the Division of Hearings and Appeals (DHA) by the June 12, 2003 deadline or even thereafter. As a result, the petitioner's representative failed to provide any reliable evidence that the community spouse's income allocation needed to be increased above \$2,020. Since (petitioner's spouse) has already been allocated \$2,020 in monthly income, there is no basis to increase her monthly income allocation because petitioner has failed to meet her burden of proof to establish the need. Accordingly, the county agency correctly denied petitioner's request to increase the community spouse's income allocation

CONCLUSIONS OF LAW

1. The petitioner's representative was unable to establish exceptional circumstances resulting in financial duress which justified an increase in her minimum monthly maintenance pursuant to sec. 49.455(8)(c), Wis. Stats.
2. The petitioner's representative failed to meet its burden of proof to establish that the basic and necessary expenses of petitioner's wife (community spouse) required an increase in her income allocation.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 18th day of
August, 2003

/sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals
924/GMW